

FILE COPY

OFFICE - Supreme Court, U. S.

FILED

APR 12 1939

CHARLES ELMORE, CLERK

No. **865**

**In the Supreme Court of the United States**

**OCTOBER TERM, 1938**

**E. FRANK BRANON,**

**PETITIONER,**

**v.**

**UNITED STATES OF AMERICA and**

**HENRY A. WALLACE, SECRETARY OF AGRICULTURE**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

**EDWARD F. MERRILL,**

*Counsel for Petitioner.*

**In the Supreme Court of the United States**

**OCTOBER TERM, 1938**

No. ....

**E. FRANK BRANON,**

**PETITIONER,**

**v.**

**UNITED STATES OF AMERICA and  
HENRY A. WALLACE, SECRETARY OF AGRICULTURE**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

Now comes E. Frank Branon, intervening defendant in the case of *H. P. Hood & Sons, Inc. and Noble's Milk Company, Petitioners v. United States of America and Henry A. Wallace, Secretary of Agriculture*, now pending on a writ of certiorari before this Court, No. 772, October Term 1938, and prays that a writ of certiorari issue to bring before this Court the appeal of said intervenor in said cause which is now pending before the Circuit Court of Appeals for the First Circuit. The record on which the instant petition is based is the same as that in the *Hood* case and is, therefore, now before this Court.

The petitioner, E. Frank Branon, a producer of milk in Fairfield, Vermont, has sold and delivered milk to H. P. Hood & Sons, Inc. for about twenty-five years (R. Vol. II, p. 224). He was permitted to intervene as a party defendant in the case as

representative of all producers selling to the petitioner H. P. Hood & Sons, Inc. (R. Vol. I, p. 68; Vol. II, pp. 224, 225) and participated throughout the trial. By his answer (R. Vol. I, pp. 68-77) he asserted the unconstitutionality of the Agricultural Marketing Agreement Act of 1937 and the invalidity of Order No. 4 and amendments thereto, alleged that the continued enforcement of the amended Order would cause pecuniary injury to producers selling to H. P. Hood & Sons, Inc., and prayed that the bill of complaint be dismissed. The final decree entered on March 9, 1939 denied the intervenor's prayer for relief (R. Vol. I, p. 106) and commanded and directed H. P. Hood & Sons, Inc. to comply with all the provisions of Order No. 4 as amended on July 28, 1937 (R. Vol. I, p. 102). The intervenor appealed to the Circuit Court of Appeals for the First Circuit on March 9, 1939 (R. Vol. I, pp. 106, 132, 140).

This petitioner submitted a memorandum in support of the petition for a writ of certiorari filed by H. P. Hood & Sons, Inc. and Noble's Milk Company, urging that the writ be granted. It is assumed that the granting of the writ on that application brought the entire cause, including the appeal of this petitioner, before this Court. But to avoid any procedural question on that point, this petition is filed.

The opinions below, jurisdiction of this Court, and the statute and marketing order involved are set out in the petition of H. P. Hood & Sons, Inc. and Noble's Milk Company.

### QUESTIONS PRESENTED

1. Whether the provisions of the Agricultural Marketing Agreement Act of 1937 and of Order No. 4, as amended, regulating the handling of milk in the Boston, Massachusetts, marketing area, which establish a market wide equalization or pooling device, deprive the petitioner and the other producers of whom he is representative of their property without due process of law and take their property for public use without just compensation in violation of the Fifth Amendment.

2. Whether, in computing the price to be paid to producers, the Market Administrator violated the provisions of the Amended Order by including in the market wide pool the milk of persons who were not producers within the meaning of Article I, Section 1 of the Amended Order.

### REASONS FOR GRANTING THE WRIT

The petitioner does not seek to raise questions additional or foreign to the issues now before the Court in the case of *H. P. Hood & Sons, Inc., et al. v. United States et al.* But the questions whether the equalization provisions of the Amended Order are constitutional and whether the Market Administrator complied with the provisions of that order in operating the market wide equalization pool are presented by the principal defendants in that case only so far as they bear upon the interests of the milk dealer. The effect of these provisions, and of the Administrator's action is also significant from the standpoint of the producer. It was in order to raise that aspect of the questions in the

case that this petitioner was originally permitted to intervene as a party defendant. All parties in interest in the *Hood* case and the other related cases now before this Court<sup>1</sup> desire that the decision in these causes settle the validity of the agricultural program with respect to milk in all its aspects. A final determination of the validity of the Amended Order here in issue requires a consideration of its effect upon the producer. That phase of the problem will be presented only if the producer is before the Court.

If this petition is granted, it is suggested that this case be consolidated for argument with *H. P. Hood & Sons, Inc., et al. v. United States et al.*, No. 772.

Wherefore it is respectfully submitted that this petition should be granted.

EDWARD F. MERRILL,  
*Counsel for Petitioner.*

<sup>1</sup>*United States et al. v. Rock Royal Cooperative, Inc. et al.*, No. 771; *Whiting Milk Company v. United States et al.*, No. 809.